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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/075,375	05/07/98	YAMAMOTO	H CGNE119-205

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HM22/0727

EXAMINER
ZAGHMOUT, O

ART UNIT	PAPER NUMBER
1638	16

DATE MAILED:

07/27/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/075,375

Applicant(s)
Yamamoto et al.

Examiner
Ousama Zaghmout

Group Art Unit
1638



☒ Responsive to communication(s) filed on Jun 5, 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 3-5 and 9-11 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 3-5 and 9-11 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☒ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Serial Number: 09/075,375

Art Unit: 1638

Status of Application

I. The Group and/or Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 1638.

II. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

III. The amendment filed 06/05/2000 as been received and entered (Paper 14).

Status of the claims:

Claim 3 has been amended.

Claims 3-5, 9-11 are pending.

IV. In the Figures, there is no Figure 8A, 8B or 8C.

The Figures should be numbered 8A, 8B, 8C to agree with the Brief Description of Drawings. Figures 1-4 should be labeled 1A, 1B, 1C, etc. and the Brief Description of Drawings amended accordingly. A description of Figure 4B should be added.

DOUBLE PATENT REJECTIONS

The rejection of Claims 3-5, 9-11 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-18 of U.S. Patent No. 6,015,939 is

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maintained because the terminal disclaimer was not acceptable since it was not signed by Attorney of record.

An attorney or agent, not of record, is not authorized to sign a terminal disclaimer in the capacity as an attorney or agent acting in a representative capacity as provided by 37 CFR 1.34 (a). See 37 CFR 1.321(b) and/or (c).

It would be acceptable for a person, other than a recognized officer, to execute a terminal disclaimer, provided the record for the application includes a statement that the person is empowered to sign terminal disclaimers and/or act on behalf of the organization.

Accordingly, a new terminal disclaimer which includes the above empowerment statement will be considered to be executed by an appropriate official of the assignee. A separately filed paper referencing the previously filed terminal disclaimer and containing a proper empowerment statement would also be acceptable.

Conclusion

Claims 3-5, 9-11 are deemed free of the prior art given the failure of the prior art to teach or suggest the particularly claimed DNA sequence and their usage in transformation experiments.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed

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within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Future Correspondence

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Ousama M-Faiz Zaghmout whose telephone number is (703) 308-9438. The Examiner can normally be reached Monday through Friday from 7:30 am to 5:00 pm (EST).

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Paula Hutzell Ph.D, can be reached on (703) 308-4310. The fax phone number for the group is (703) 305-3014.

Any inquiry of a general nature or relating to the status of this application should be directed to THE MATRIX CUSTOMER SERVICE CENTER whose telephone number is (703) 308-0196.

Ousama M-Faiz Zaghmout Ph.D.

August 22, 2000


PAULA K. HUTZELL
SUPERVISORY PATENT EXAMINER